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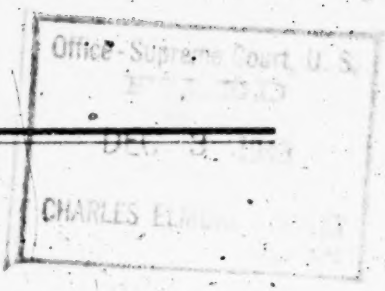

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 25

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY ON BEHALF OF RAILROAD APPELLANT TO APPELLEES' MEMORANDUM.

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CARSON L. TAYLOR,
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Of Counsel.

THE DUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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REPLY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY TO MEMORANDUM FILED BY CERTAIN APPELLEES PURPORTING TO SHOW DISTINCTIONS BETWEEN THE ISSUES, EVIDENCE, AND PRINCIPLES OF LAW INVOLVED IN U. S. v. C. M. ST. P. & P. R. R. CO., 294 U. S. 499, AND THOSE INVOLVED ON THIS APPEAL.

We have carefully examined the memorandum and we respectfully submit that it adds nothing to what the same parties presented in their written briefs and on oral argument.

This railroad appellant earnestly urged in its original brief and in its reply brief that on the appeal of this rail-

road, the issues were essentially those previously determined by this Court in *U. S.* v. *C. M., St. P. & P. R. R. Co.*, 294 U. S. 499. In our briefs we pointed out the reasons why in our opinion the principles announced by the Court in *U. S.* v. *C. M. St. P. & P. R. R. Co.*, *supra*, required the setting aside of the Commission's order here under attack. We will not burden the Court by rearguing our case in this reply but attention is called to the following which we believe more nearly conforms to the suggestion made at the oral argument by Mr. Justice Frankfurter to counsel representing opposing railroad and mining interests.

In both proceedings before the Commission, to-wit: the one resulting in the order under review in *U. S.* v. *C. M. St. P. & P. R. R. Co.*, *supra*, and the one resulting in the order here under attack, the Milwaukee Railroad proposed rates from mines on its railroad in the Brazil and Linton, Indiana mining districts to Rockford, Illinois and other nearby destinations it believed necessary for it to competitively transport coal. In each case, the proposed rates were suspended and after hearing the Commission entered orders reciting that the proposed rates were unlawful and required their cancellation.

In neither case did the Commission support the conclusion that the rates were unlawful by adequate and essential findings. In the first case this Court, in criticising the Commission's report and order, said on pages 506, 507:

> "The statement * * * that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated. * * *
>
> "Subjected to these tests, the finding by the Commission that the new rates are unreasonable is seen to be nothing more than a deduction from the paragraph immediately preceding, wherein we learn that

the schedule, if put into effect, will disrupt the rate structure in Indiana and related areas and disturb groupings and differentials maintained for many years. This brings us to the question whether such disruption and disturbance may be deemed a sufficient reason for taking from a carrier the privilege of reaching out for a larger share of the business of transportation and initiating its own schedule to help it in the struggle.

* * *

"Every change of a rate schedule, either voluntary or involuntary, is a disruption *pro tanto* of the rate structure theretofore prevailing. Plainly such a disruption without more is no sufficient reason for prohibiting a change."

Again in the case at bar, while there is a recital that the condemned rates of the Milwaukee are unlawful, an examination of the report will disclose that there are no adequate, clear and essential supporting findings. An examination of the report by its four corners clearly discloses that the real reason for condemning the rates and requiring the Milwaukee to establish for the transportation of coal from mines on its railroad higher rates, both actually and relatively, than those approved for its competitors serving mines in Illinois was the fact that in the opinion of the Commission rate relationships would be disturbed, although the lawfulness of such relationships was not determined. In this respect the two reports are identical. The following is from the Commission's report (R. 190):

"In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). That differential is on a lower level than any other between im-

portant groups in this midwestern adjustment. Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted."

In the foregoing the Commission has clearly stated why it condemned the rates. The Commission was of the opinion that it could require the Milwaukee, which serves mines in the Brazil and Linton, Indiana groups only and does not serve mines in the more distant Indiana groups, to maintain higher rates than would be otherwise warranted in order that lower rates than warranted could be continued from the more distant groups. The statement that the differential "is of long standing and is not here sought to be changed" is inaccurate. The Milwaukee has consistently, throughout both proceedings, insisted that the proper and lawful rate relationship was one which would permit it to obtain a fair share of the available traffic and the rates we here proposed would continue in effect such a relationship which is of long standing.

From the foregoing, we believe it is apparent that the Commission again misconceived its power and disregarded the applicable rules of law set out in *U. S.* v. *C. M. St. P. & P. R. R. Co., supra.* The similarity in the cases before the Commission is more fully discussed in our briefs.

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Dated at Chicago, Illinois,
December 1, 1948.